is clear from his judgment that he accepted the plaintiff's medical evidence and rejected the defendant's.

In these circumstances, I am forced to the conclusion that little or no consideration was given to the question of the loss of future earnings.

One is always reluctant to disturb a finding of this nature by a Judge of first instance and although the award is on the low side and I would have given more, I would not be disposed to interfere but, for the reasons I have stated, I have come to the conclusion that the learned trial Judge did not take into account, or sufficiently take into account, that the girl was, for all practical purposes, unemployable and that her chances of marriage were virtually non-existent and not merely affected.

Taking these matters into consideration together with all the other factors to which the learned trial Judge has referred, I consider a sum of $60,000 would be an appropriate award in this case.

The appeal must accordingly be allowed and the judgment of the learned trial Judge set aside and judgment entered for the plaintiff for $60,764 and costs both here and in the Court below.

Appeal allowed.

Solicitors: *Rodyk & Davidson; L. A. J. Smith.*

CHUA SIN TENG & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Ismail Khan J.) January 5, 1963]

[Seremban — Criminal Appeal No. 20 of 1962]

Road Traffic — "Certificate" of passing test of competence to drive — Whether certificate required by law — Who should sign certificate — Role of Registrar of Motor Vehicles — Motor Vehicles (Driving Licence) Rules, 1959, rr.6, 7, 10.

Penal Code, ss.193, 197, 417 — Driving tester issuing false certificate in material point — Whether certificate to be issued by law — Meaning of "certificate" — Intentionally inducing government to be deceived — Abetment of.

The 1st appellant, a driving tester employed by the Road Transport Department, Negri Sembilan, was charged under section 197 of the Penal Code for cheating to wit by knowingly issuing a false Certificate of Passing a Test of Competence to drive and for intentionally inducing the government to issue a driving licence which would not have been issued if the government had not been so deceived, an offence punishable under section 417 of the said Code. The 2nd and 3rd appellants were charged with aiding and abetting the said offences. On conviction the appellants appealed. It was argued *inter alia* on appeal that (i) the charge did not state that the act of granting a licence to the complainant had caused or was likely to cause damage or harm to the government and even if it did such act had not caused or was likely to cause such harm or damage, (ii) the learned President misdirected himself in treating the complainant as an agent provocateur and not as an accomplice and (iii) a certificate of competence to drive signed by a tester and forwarded pursuant to Rule 10 of the Motor Vehicles (Driving Licence) Rules, 1959 is not a certificate required by law to be given as required by section 197 of the Penal Code.

Held: (1) the granting of the licence to the complainant would not damage the reputation of the government, in fact the harm done was too remote;

(2) as the complainant had "concurred" in the criminal designs for a time he should be treated as an accomplice and his evidence was corroborated;

(3) the certificate of competence to drive is a certificate required by law to be given or signed. Rule 10(1) read with Rule 6(3) imposes an obligation on the tester to give or sign a certificate as he is the person who has conducted the test and has to be satisfied as to the competence of the applicant.

Cases referred to:—

(1) *In re Krishnan* A.I.R. 1948 Mad. 268.
(2) *Tan Yook Suan* v. *Reg.* [1954] M.L.J. 116.
(3) *Reg.* v. *Mullins* 3 Cox C.C. 526.
(4) *Teja Singh & Anor.* v. *Public Prosecutor* [1950] M.L.J. p. 71.
(5) *Rex* v. *Baskerville* [1916] 2 K.B. 658.
(6) *Birendra Nath Chatterjee* v. *Umananda Mukherjee* A.I.R. 1926 Cal. 258.
(7) *Mahabir Thakur & Anor.* v. *Emperor* A.I.R. 1917 Cal. 466.
(8) *Public Prosecutor* v. *Dr. J. G. N. Fonseka* [1958] M.L.J. 102.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph, Jr. for the 1st appellant.

Kam Woon Wah for the 2nd appellant.

Mohd. Salleh bin Abas (Deputy Public Prosecutor) for the respondent.

Ismail Khan J.: The first appellant was charged as follows:—

That you on the 13th September, 1961, at the Road Transport Department, Seremban, in the State of Negri Sembilan did issue a Certificate of Passing a Test of Competence to drive in form (D.L.18) bearing serial No. 243418 which certificate is required to be given by law, namely Rule 10 the Motor Vehicles (Driving Licence) Rules, 1959 knowing that such certificate is false in material point, to wit, "LEE KONG YONG I/C NS. 104566 has been examined and has passed the test of competence to drive class 'B' only" and that you thereby committed an offence under section 197 of the Penal Code and punishable under section 193 of the Penal Code.

That you on the 15th September, 1961, cheated the Government of the Federation of Malaya by deceiving it to believe that one LEE KONG YONG (I/C NS. 104566) has been examined and has passed the test of competence to drive class 'B' vehicle, which information you knew to be false or did not believe to be true and thereby intentionally induced the aforesaid Government to issue a driving licence to the aforenamed LEE KONG YONG, which licence would not have been issued if the aforesaid Government had not been so deceived and that you thereby committed an offence of cheating punishable under section 417 of the Penal Code.

The second and third appellants were each charged with aiding and abetting the said offences by the first appellant under section 109 of the Penal Code. A third charge against the second and third appellants for an offence punishable under section 162 of the Penal Code was stayed.

All three appellants were convicted.

On the first charge the first appellant was sentenced to one year's imprisonment and a fine of $600 in default six months' imprisonment. On the second charge he was sentenced to six months' imprisonment, the sentences to run consecutively.

The second and third appellants were sentenced each to six months' imprisonment and a fine of $600 in default three months' on the first charge, and to three months' imprisonment on the second charge, the sentences to run consecutively.

The prosecution evidence showed that the complainant, Lee Kong Yong, the holder of a provisional driving licence to drive a motor cycle had failed in two tests in his attempt to obtain a full driving licence. Some time in July 1961, he saw the third appellant, an employee of the second appellant, the principal of the Sin Min Driving School, Seremban, who told him that for a sum of $70 and a licence fee of $10 he could get him the licence without any test. On 2nd August, 1961, the complainant saw the third appellant and agreed to pay the $70. He was then asked to sign a form and to come in a couple of days for his licence. On 8th August, 1961, however, the complainant got in touch with the police and was given a sum of $40 which he paid to the third appellant as a deposit. A receipt P9 prepared by the second appellant and signed by the third appellant was issued to him. This it was alleged was a mere device to mask the real nature of the transaction which was to get a licence without a test. On 12th September, 1961, the complainant was informed by the Registrar and Inspector of Motor Vehicles, Seremban, that he would have to undergo a driving test on 13th September, 1961. According to the Registrar and Inspector of Motor Vehicles when an applicant called at the office on the day of the test he would have to hand over his provisional driving licence, identity card and his appointment card which would then be passed to the tester. The latter would then fill the necessary particulars relating to the applicant in a form such as P18. The particulars would include the type of vehicle to be used for the test. The result of the test would then be recorded in the same form. Then a certificate of competence signed by the tester would be issued to the applicant and on the strength of this certificate he would get his driving licence. On 13th September, 1961, the complainant reminded the second and third appellants about his test and handed over his identity card, provisional driving licence and his appointment card and a fee of $10. Then he and the second appellant called at the R.I.M.V. office where the second appellant handed over a bundle of documents to a clerk. He then met the first appellant and after some conversation with him returned to the complainant and said: "It is all right, I'll take you back." At the second appellant's driving school the complainant was asked to sign the usual form for a full driving licence which he was told he could get the next day. On 14th September, 1961, the complainant saw the police and was given the balance of $30 in marked notes for payment to the second and third appellants. On 15th September, 1961, the complainant received a certificate of competence to drive a motor cycle, P3, from the appellants, and on the same day he presented the certificate at the R.I.M.V. office and received his full driving licence P12. There was evidence that the first appellant signed P3 and also P18 which set out the result of the test and the numbers of the two vehicles purported to have been used for such test. It is clear from the evidence that neither of these two vehicles was a motor cycle. The complainant did not receive any tuition at the second appellant's driving school nor was he tested by the first appellant on 13th September, 1961. The sum of $30 in marked notes, P1, was recovered from the second appellant by the police.

The learned President's judgment has been attacked on a number of grounds. I propose to deal first, with counsel's submission in respect of the second charge against the first appellant. It was contended that the charge did not state that the act of granting a licence to the complainant had caused or was likely to cause damage or harm to the Government, and even if it did such act had not caused or was likely to cause such harm or damage. The learned Deputy Public Prosecutor argued that the grant of a licence to the complainant would damage the reputation of the Government in that a licence had been issued to someone who was not competent to drive. I cannot agree with this submission. The result suggested by the learned Deputy is a mere possibility and not a necessary consequence of the act and therefore an essential element of the offence of cheating is not satisfied. In my opinion the harm done is too remote. I am strengthened in this view by the observation of Horwill J. in *In re Krishnan* [1]. In that case the accused had taken money from several persons and procured motor driving licences for them by forging applications and getting licences issued without "applicants doing anything". It was argued for the Crown Prosecutor that the act of granting a licence was likely to cause damage to the reputation of the licensing officer and harm to the public through the grant of a licence to one who had not been found fit to drive. The learned Judge held that "the possible injury to the licensing officer's reputation and the possible harm to the public are causes too remote to be taken account of."

I therefore allow the appeal of the first appellant on the second charge. His conviction is quashed and the sentence is set aside. In the result I allow the appeal of the second and third appellants in respect of the second charge. The conviction of each is quashed and his sentence set aside.

With regard to the first charge I shall dispose of some of the grounds of appeal before coming to those that call for a more detailed consideration.

It was objected that evidence of payment of the two sums of $40 and $30 to the second and third appellants was inadmissible, as it was relevant only to the third charge which was stayed. In my view, this evidence is equally relevant to the first charge as the complainant had said he was asked to pay $70 for a licence without a test.

Again it was said that the learned President was wrong in trying the three appellants together and that they were prejudiced by the joint trial. In this case where the first appellant was accused of committing an offence and the rest of abetment, the question of a joint trial was in the discretion of the learned President and there is nothing to suggest that in ordering such a joint trial the learned President had not exercised his discretion judicially.

It was also urged that the learned President should have accepted the first appellant's evidence that he had exercised his discretion when he passed the complainant. It is true that according to the Registrar and Inspector of Motor Vehicles he, the first appellant, had a complete discretion to pass or fail anyone. But the point of importance is that there was no test as the first appellant himself had admitted and, in the absence of any test, it is impossible to see how his discretion could have been exercised.

The next point raised was that the learned President had misdirected himself in treating the complainant as an agent provocateur and not as an accomplice. My attention was drawn to the case of *Tan Yook Suan* v. *Regina* [2]. In that case the accused had asked one Phua Hoon Sin, a prosecution witness to pay a bribe to some officers of the Singapore Improvement Trust and himself in order to get his partnership registered. Phua Hoon Sin wanted the amount reduced and said he would consider it. A few days later the accused asked Phua Hoon Sin to pay $1,000 to one officer who was going on leave. Phua Hoon Sin agreed to pay. Later he reported to the police. It was held by Murray-Aynsley C.J. following *Reg.* v. *Mullins* [3] that Phua Hoon Sin having concurred in the criminal designs for a certain time until getting alarmed for some reason he turned upon his former associate and gave information against him, he must be regarded as an accomplice. In this case there is evidence that the complainant had negotiated and bargained with the third appellant and had agreed to pay $70 for his licence without a test before he decided to report to the police. He had therefore "concurred in the criminal designs" for a time and, in my opinion, should be treated as an accomplice. The learned President, however, proceeded to say that even if the complainant was an accomplice there was corroboration of his evidence. In the case of *Teja Singh & Anor.* v. *Public Prosecutor* [4], at p. 73, Spenser-Wilkinson J. said:—

> "I can see nothing wrong in a Court finding, as a matter of law, that a witness is not an accomplice and then going on to indicate what its finding would be in case it should be held that this matter of law had been wrongly decided."

The learned President found this corroboration in the evidence of police inspectors, Zulkifli and Cheam and in the documentary evidence. In my opinion, such evidence bore directly on the commission of the crime and tended to connect the appellants with the crime. It also complies with the principle laid down in the old case of *Rex* v. *Baskerville* [5] at p. 667, where Lord Reading said:—

> "We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it . . . . The nature of the corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence is evidence which shows or tends to show that the story of the accomplice that the accused committed the crime is true, not merely that the crime has been committed, but that it was committed by the accused."

Lastly, it was strenuously argued by counsel for the first appellant that a certificate of competence to drive signed by a tester and forwarded pursuant to Rule 10 of the Motor Vehicles (Driving Licence) Rules, 1959, is not a certificate required by law to be given within the meaning of section 197 of the Penal Code. He contended in the first place that there is no law requiring a tester to issue or sign a certificate of competence, and, secondly, that the certificate contemplated by the section is required by law to be given or signed for the purpose of being used in evidence in the course of the administration of justice. In support of the second point he cited the case of *Birendra Nath Chatterjee* v. *Umananda Mukherjee* [6]. With due respect, I find myself unable to accept this meaning of the word "certificate". It is not warranted by the clear words of the section and would have the effect of restricting its application. There is no particular limitation to the character of the certificate meant except that which is found in the section itself. It must fulfil one of the requirements there set out, viz., (1) that it is required by law to be given or signed, or (2) that it relates to a fact which by law is admissible in evidence. If it does not a man cannot be punished under the section. (See *Mahabir Thakur & Another* v. *Emperor* [7]).

The other point for consideration is whether the certificate is one required by law to be given or signed. In the case of *Public Prosecutor* v. *Dr. J. G. N. Fonseka* [8], at page 104, the Court of Appeal held the "requirement" refers not to the production of a certificate but to the obligation imposed on somebody to give or sign a certificate. It is therefore necessary to examine the Motor Vehicles (Driving Licence) Rules, 1959, made under the Road Traffic Ordinance, 1958. Rule 6(3) reads:—

" .....an applicant for a licence shall be deemed to be competent to drive a motor vehicle of any class or description.....if he is tested on a vehicle of any class or description.....and satisfies the person conducting the test that he —

(a) xxxxxxx

(b) xxxxxxx

(c) is competent to drive, without danger to and with due consideration for other users of the road, a vehicle of the same class or description as that on which he is tested.

Rule 6(4) contains a table showing in Column 1 the groups into which for the purposes of the rules motor vehicles are divided. A motor cycle is included in the group.

Rule 7 provides for tests to be conducted by a class of examiners to be appointed by the Commissioner of Road Transport.

Rule 10 reads as follows:—

(1) Any person passing the test shall be furnished with a certificate in form Number DL.18 of the First Schedule to these Rules, and any person failing to pass such test shall be furnished with a statement as in form Number DL.19 of such Schedule.

(2) If a certificate or statement so furnished by a Registrar is lost or destroyed, the person to whom it was furnished may obtain a duplicate copy from the Registrar who furnished the same on payment of the fee prescribed in item 5 or 6 of the Second Schedule hereto.

(3) An applicant for a licence, who is required to satisfy the Registrar that he has passed the test, shall deliver the certificate for retention by the Registrar. The Registrar shall if so required by the applicant issue to him a copy of the certificate on payment of the fee prescribed in item 5 of the Second Schedule hereto.

In my opinion Rule 10(1), read with Rule 6(3), imposes an obligation on the tester to give or sign a certificate as he is the person who has conducted the test and has to be satisfied as to the competence of the applicant. The role of the Registrar is, in my view, only that of the custodian of the certificate and this view appears to be borne out by Rule 10(2) and (3).

I therefore hold that the certificate of competence to drive P3 is a certificate required by law to be given or signed. There is evidence that the first appellant signed it and that it was false in a material particular, and that the second and third appellants aided and abetted the commission of the offence. The appeal of each of the appellants in respect of the first charge against him is dismissed and his conviction is upheld. As to the sentence on each of them, although I am of opinion that it is on the light side, I do not wish to interfere with it.

Appeal dismissed;
Conviction upheld.

Solicitors: *Joseph & Son; Kam Woon Wah & Co.*

MUNIANDI v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) January 24, 1963]

[K.L. — F.M. Criminal Appeal No. 46 of 1962]

Criminal Law — Voluntarily causing grievous hurt — Framing of charge — Whether charge should specify that instrument used as weapon of offence was likely to cause death — Explanation of Penal Code, s.326.

The appellant was convicted for causing grievous hurt with a knife in contravention of section 326 of the Penal Code and sentenced to 2 years' imprisonment. On appeal it was argued *inter alia* that the charge was bad because it did not include an allegation that the instrument used was one which when used as a weapon of offence was likely to cause death as in *Shaik Meera* v. *The Queen* (1) and *Sultan Mohamed* v. *The Queen* (2).

Held: as the knife used in this case fell within the first three descriptions, i.e. for shooting, stabbing or cutting it was not necessary to specify in the charge that the instrument used was one which when used as a weapon of offence was likely to cause death. *Shaik Meera* v. *The Queen* and *Sultan Mohamed* v. *The Queen* distinguished.

Per Curiam: "In our view the meaning of that (i.e. section 326 of the Penal Code) is crystal clear. There is an offence if the instrument used is one for shooting; there is an offence if the instrument used is one for stabbing; there is an offence if the instrument used is one for cutting; and finally there is an offence if the instrument used which does not come within either of the first three descriptions, that is for shooting, stabbing or cutting, is one which if used as a weapon of offence is likely to cause death. In other words the words 'likely to cause death' qualify the word 'instrument' the second time it occurs and not the first time.

Cases referred to:—

(1) *Shaik Meera* v. *The Queen* [1955] M.L.J. 159.

(2) *Sultan Mohamed* v. *The Queen* [1952] M.L.J. 186.

COURT OF APPEAL (CRIMINAL).

D. A. Devadson for the appellant.

H. S. Ong (Deputy Public Prosecutor) for respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted at Muar for causing grievous hurt in contravention of section 326 of the Penal Code. He was sentenced to 2 years' imprisonment. Against that conviction and sentence he has now appealed.

In our view the appeal is without merit.

There is no doubt as to what happened on the morning in question. The appellant, who was employed as a mandor on a large rubber estate near Johore, became involved in an altercation with the conductor of the estate. Apparently the dispute arose over the appellant's wife being given less remunerative work than she had thitherto. As so often happens on these occasions one word leads to more words and more words lead to blows, the first blow being struck by the appellant. The whole affair can only be described by the Anglo-Indian colloquialism of "bobbery". Up to a point no great harm was done to anybody but at some stage of the proceedings the appellant produced what in our view is an extremely dangerous looking knife and inserted it into the